

Amendment No. 1 to SB1201

Bailey  
Signature of Sponsor

**AMEND Senate Bill No. 1201**

**House Bill No. 1276\***

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 66-34-103, is amended by deleting subsection (d) and substituting:

(d) If an owner or prime contractor withholds retainage that is for the use and benefit of the prime contractor or its remote contractors, then neither the prime contractor nor any of its remote contractors are required to deposit additional retained funds into an escrow account.

SECTION 2. Tennessee Code Annotated, Section 66-34-104(c), is amended by deleting "three hundred dollars (\$300)" and substituting "five hundred dollars (\$500)".

SECTION 3. Tennessee Code Annotated, Section 66-34-204, is amended by deleting the section and substituting:

(a) A party shall, after an event described in subdivisions (a)(1)-(3) and pursuant to the terms of the written contract, release and pay to the prime contractor all funds the party may have withheld as retainage; provided, however, the retainage must be paid within ninety (90) days after the date of the occurrence of an event described in subdivisions (a)(1)-(3). The party shall pay the prime contractor within the timeframes described in this subsection (a) when the party:

(1) Has received a use or occupancy permit for an improvement from a governmental agency lawfully issuing the permit;

(2) Has received a certificate of substantial completion from an architect, engineer, or other party charged with supervision, observation, or management of the construction of an improvement; or

(3) Begins to use or could have begun to use the improvement.

(b) If the party withholding the retained funds fails to pay or otherwise release the retainage as provided in subsection (a), then the party shall pay each owner of the retained funds an additional five hundred dollars (\$500) per day as damages, not as a penalty, for each day that the retained funds are not paid or otherwise released.

Damages accrue from the first day after the ninetieth day of the first occurrence of an event described in subdivisions (a)(1)-(3).

(c) In addition to the damages set forth in subsection (b), a prime contractor or remote contractor that fails to pay or otherwise release retained funds as required by § 66-34-103(b) shall pay the owner of the retained funds an additional five hundred dollars (\$500) per day as damages, not as a penalty, for each day that the retained funds are not paid or otherwise released. Damages accrue from the first day after the tenth day the prime contractor or remote contractor received the retainage from the owner or higher-tier contractor.

SECTION 4. Tennessee Code Annotated, Title 66, Chapter 34, is amended by adding the following as a new section:

**66-34-206.**

(a) Notwithstanding this chapter to the contrary, a remote contractor is entitled to an early release of the retainage belonging to the remote contractor upon the remote contractor establishing that the improvement or work furnished under the written agreement to which the remote contractor is a party is substantially complete. As used in this section, "substantially complete" means:

(1) The remote contractor obtained a permit from a building codes department or other authority having jurisdiction over the remote contractor's

work and received an approval from the department or authority allowing the use of the remote contractor's work for its intended purpose;

(2) The use of, or ability to use, the remote contractor's work;

(3) Ten (10) days after the date the party withholding retainage receives a certificate of substantial completion substantially similar to the form in subsection (c), signed by the remote contractor certifying that its work is substantially complete and seeking release or payment of the retainage belonging to the remote contractor; provided, however, that a party withholding retainage is not required to release or pay retainage under this subdivision (a)(3) if it provides a written response setting forth adequate legal reasons for its refusal to release retainage, including, but not limited to, the failure of the remote contractor to substantially complete its work within ten (10) days of its receipt of the remote contractor certificate of substantial completion; or

(4) The remote contractor received a certificate of substantial completion from an architect, engineer, or other party charged with supervision, observation, or management of the construction of an improvement.

(b) Upon substantial completion of the remote contractor's work, a remote contractor may issue a written request to the party withholding retainage to release the retainage belonging to the remote contractor; provided, that the remote contractor furnishes documentary evidence that the improvement or the remote contractor's work is substantially complete, as that term is described in subdivisions (a)(1)-(4). A party that receives a request pursuant to this subsection (b) and that is withholding retainage must release the retainage within ten (10) days of the party's receipt of the request. Any retainage released pursuant to this section shall still be included in calculating the maximum five percent (5%) retainage permitted by § 66-34-103(a).

(c) A remote contractor may certify the substantial completion of the remote contractor's work by sending a certificate of substantial completion to the party

withholding retainage. The certificate of substantial completion must be in substantially the following form:

DATE: [date]

TO: [Owner or other party withholding retainage]

[Prime contractor and any other contractor with whom remote contractor may contract]

FROM: [Remote contractor]

[Remote contractor] certifies as of this the [day] of [month], [year], that [remote contractor] entered into a written agreement with [prime or remote contractor] under which [remote contractor] furnished the following labor and materials:

[Remote contractor] furnished the labor and materials in furtherance of improvements to [identify improved property]. [Remote contractor] first furnished labor and materials [day] of [month], [year], and last furnished materials on [day] of [month], [year]. As of the date of this certificate, the work required of [remote contractor] under its subcontract is substantially complete to the best of [remote contractor's] knowledge, information, and belief and can be utilized for its intended use. [Remote contractor] requests its retainage be released within ten (10) days of receipt of this certificate.

[signed, remote contractor]

(d) A party that fails to release the retainage for which a remote contractor provides certification pursuant to this section is subject to the damages provided in § 66-34-204.

(e) The party withholding retainage may assert as a defense in an action for payment of retainage or the damages provided by this section that the remote contractor's work was not substantially complete.

SECTION 5. This act takes effect January 1, 2024, the public welfare requiring it, and applies to contracts entered into, amended, or renewed on or after the effective date of this act.